RAY L. VERG-IN

IBLA 93-539 Decided June 28, 1995

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claims AA-73539 and AA-73540 null and void ab initio.

Affirmed.

1. Mining Claims: Location--Mining Claims: Withdrawn Land

A mining claim located when the land was withdrawn from all forms of appropriation under the public land laws, including the mining laws, is null and void ab initio.

2. Res Judicata--Rules of Practice: Appeals: Effect of

Under the doctrine of administrative finality, when a party has had an opportunity to obtain review within the Department and no appeal was taken, the decision may not be reconsidered in later proceedings, except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.

APPEARANCES: Ray L. Verg-in, Sand Point, Alaska, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Ray L. Verg-in has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 8, 1993, declaring the Virg-in I and Virg-in II unpatented mining claims (AA-73539 and AA-73540) null and void ab initio because the claims were located on land withdrawn from mineral entry. 1/

Verg-in originally filed certificates of location for the Virg-in I and Virg-in II mining claims with BLM on October 4, 1979, and they were assigned recordation claim numbers AA-30763 and AA-30764. Those notices

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1/ The record indicates that appellant previously spelled his last name Virg-in.

described the claims as being situated on Elephant Creek within an area described by protracted survey as the SE¼ sec. 35, T. 21 N., R. 69 W., Seward Meridian.

BLM declared those claims null and void ab initio in a decision dated January 17, 1985, based on its conclusion that the land embraced by the claims was not open to mineral entry at the time of location. It reached that conclusion because the land had been withdrawn from mineral entry on December 18, 1971, by section 11 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1610 (1988), and the certificate of location for each claim listed February 13, 1972, as the date of location. 2/ On appeal to this Board, we reversed concluding that appellant had provided convincing evidence that the actual date of location of the claims was November 26, 1971, which predated the ANCSA section 11 withdrawal. Ray L. Virg-in, 84 IBLA 347, 349 (1985).

By decision dated June 27, 1990, BLM declared AA-30763 and AA-30764, among other claims, abandoned and void because of a failure to file affidavits of labor or notices of intention to hold for the claims for the 1989 assessment year, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988). Verg-in did not appeal that decision. Instead, on August 20, 1990, Verg-in filed with BLM copies of the same certificates of location for the Virg-in I and Virg-in II claims that he had filed for recordation on October 4, 1979. While those certificates listed November 26, 1971, and February 13, 1972, as the dates of location, Verg-in included a hand-written notation on each stating: "Reposted and refiled 8-20-90." BLM assigned recordation claim numbers AA-73539 and AA-73540 to those claims.

In its June 8, 1993, decision BLM declared those claims null and void ab initio because the claims were located in a township that was withdrawn from mineral entry by Public Land Order No. (PLO) 5184, 37 FR 5588 (Mar. 16, 1972). 3/

On appeal, appellant asserts that he filed the notices of location on August 20, 1990, in reliance upon assurances by BLM personnel that the

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2/ Section 11(a)(1) withdrew from all forms of appropriation under the public land laws, including the mining law, townships containing the Native villages listed in section 11(b) and other surrounding townships. Verg-in's claims were located on land included in the withdrawal of land for Marshall, a Native village listed in section 11(b).

3/ PLO 5184, dated Mar. 9, 1972, was a withdrawal for classification or reclassification of some of the areas withdrawn by section 11 of ANCSA, 43 U.S.C. § 1610 (1988), including those lands "lying between 58° N. and 64° N. latitude, and west of 161° W. longitude, and not withdrawn for any part of the National Wildlife Refuge System." That area included the land where appellant located the claims at issue.

land was open to mineral location, arguing in effect that BLM is estopped from declaring his 1990 locations null and void. Alternatively, he challenges the earlier BLM decision, dated June 27, 1990, declaring AA-30764 and AA-30765 abandoned and void. He now alleges that he timely filed evidence of assessment work for 1989.

[1] The law is well established that mining claims located on Federal lands withdrawn from mineral entry on the date of location are null and void ab initio. David R. Clark, 119 IBLA 367, 368 (1991); Kathryn J. Story, 104 IBLA 313, 315 (1988), and cases cited therein. The land in question was clearly withdrawn from mineral location at the time appellant located the present claims in 1990. The land was initially withdrawn in 1971 by section 11 of ANCSA and thereafter also withdrawn in
1972 by PLO 5184. Those withdrawals were not effective as against appellant's claims located in 1971. However, when those claims were declared abandoned and void, the withdrawals attached, eo instanti, and future mining claim locations were precluded. See Cotter Corp., 127 IBLA 18, 20 (1993).

Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the withdrawal. There is no indication in the record of modification or revocation of the withdrawals to the extent they affect the land in question. Therefore, BLM properly found appellant's claims null and void ab initio.

Appellant's contentions do not dictate a different result. First, even assuming that appellant may have received assurances that the land was open to location, which seems unlikely given the fact that the master title plat and historical index included in the case file show otherwise, appellant knew or should have known the land was withdrawn and not subject to location because the status of the land in question was discussed by the Board in Ray L. Virg-in, supra. One of the elements that must be established in order to support a claim of estoppel is the party asserting estoppel must be ignorant of the true facts. Ptarmigan Co., 91 IBLA 113, 118 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991). We cannot find that appellant was ignorant of the true facts. Another necessary element to be shown is affirmative misconduct by BLM, such as misrepresentation or concealment of material facts, which must be in the form of an official written decision. Henry E. Krizman, 104 IBLA 9, 11 (1988). Here, there is no official written decision upon which appellant relies, only asserted oral representations.

Finally, we have held that while circumstances may exist where the Government can be estopped because a private party acting in reliance upon Governmental conduct was prevented from obtaining a right which might have been acquired, the Government can never be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance. Shama Minerals, 119 IBLA 152, 156 (1991); United States v. White, 118 IBLA 266, 303-04, 98 I.D. 129, 149 (1991).

[2] Regarding appellant's present challenge to the June 27, 1990, decision, we have held that under the doctrine of administrative finality, when a party has had an opportunity to obtain review within the Department and no appeal was taken, the agency decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent injustice. Orvin Froholm, 132 IBLA 301, 312 (1995); Melvin Helit v. Gold Fields Mining Corp., 113 IBLA 299, 308, 97 I.D. 109, 114 (1990). Appellant received the June 27, 1990, decision and he knew or should have known the status of the land in question. In this case, there are no compelling legal or equitable reasons to deviate from that doctrine.

We also note that with his statement of reasons for appeal appellant submitted a check for $400 for "the new and current requirement
from BLM for the 'Annual Rental Fees' for the 1993 and 1994 Rental years
at $100/claim per year." That check, dated October 5, 1993, is made out
to BLM.

Under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992),
and its implementing regulations, rental payments of $100 per claim for mining claims located on or before October 5, 1992, were required to be paid to BLM on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993.

Thus, even if we were to assume that appellant's present claims had been properly located on lands available for mineral entry, the claims would be deemed abandoned and void for failure to submit the rental fees
to the proper BLM office on or before August 31, 1993. See Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1994). 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is affirmed.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

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Will A. Irwin
Administrative Judge

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4/ Upon receipt of the case file, BLM should return appellant's check to him. In addition, appellant has requested the return of pictures submitted on appeal which are enclosed in a purple binder. BLM should also return that binder to appellant.